

Terms of trade

1 Introduction

- 1.1 **These terms.** These terms apply to all services which we provide you. Services that involve wet hire will be the provision of the Equipment and operator.
- 1.2 **Us.** All references to "us", "we", "our" etc., refer to Mango Bobcat Hire Pty Ltd ACN 652 882 696 and, where relevant, its officers, employees and agents.
- 1.3 **You.** All references to "you", "your", etc. refer to the person that requested the services be provided including those that place a request for services with us (whether in writing or orally), and their representatives and if more than one, each of them jointly and severally.
- 1.4 **Supersede.** These terms supersede any earlier negotiations and representations whether oral or written, agreement for the same goods and/or services, and terms.
- 1.5 **Changing these Terms.** We may change these terms at any time and you will be bound by any change on the date that we give you notice of such change (whether or not you actually receive the notice). You are deemed to have received notice when we:
- (a) send you the changed terms to any address you have advised us of (including an email address);
 - (b) place the changed terms on our website; or
 - (c) display the changed terms at our premises.

2 Price List and orders

- 2.1 **Price List.** Pricing is based on the price list applicable at the date that we provide the services to you. We may provide you with a price list before or after receiving a request for services or make it available on our website.
- 2.2 **Acceptance.** You accept the price list and the provision of our services on the earlier of you placing a request for service (whether in writing or orally) or by your conduct including allowing us to carry out the services.
- 2.3 **Order form.** You are responsible for checking the prices in any price list. We take no responsibility for any omissions or errors in the description of the services or the prices set out in any price list.
- Cancellation.** If you cancel a request for services, you must do so in writing. All cancellations will be subject

to a charge, the greater of pro-rata to the services provided to date plus 15% or 15% of the total price payable by you to us, whichever is the greater.

3 Services

- 3.1 **Maintenance and repair.** We are responsible for the repair and maintenance of the Equipment, except to the extent it is caused or contributed to by an act or omission by you. You are not authorised to order or carry out any maintenance, repair or alteration to the Equipment without our prior written consent. The operator of the Equipment remains our employee and operates the Equipment in accordance with your instructions. As such, we will not be liable for any actions of the operator in following your instructions.
- 3.2 **Instalments.** We reserve the right to supply services by instalments. Each instalment will be deemed to be sold under a separate contract. You cannot refuse to accept the services or seek to terminate the provision of the services if we elect to provide the services in instalments.
- 3.3 **Unforeseen work.** You will pay us, at the rate we then charge for services provided outside of scope, for any services provided outside the scope of the initial services quoted.
- 3.4 **Working hours.** All services are quoted for as being provided between 7am to 5pm on business day in Queensland (being a day other than a weekend or a day gazetted as a public holiday in Queensland). Any work undertaken outside of those hours may incur additional charges.
- 3.5 **Access.** The parties agree:
- (a) prior to any services being provided to you by us, where we elect in our discretion, you must permit us or our subcontractors to attend the property to determine the condition and suitability of the property and whether the Equipment is suitable to provide the services;
 - (b) you will obtain the necessary permits and/or plans for the completion of the services and will pay any fees associated to any local government or other authority required for services to be provided;
 - (c) you are responsible for identifying and clearly marking the location of all services above and below ground where the works

zare to be performed including, but not limited to any electrical services, gas services, drains, pipes, sewers, mains, pumps, irrigation, telephone and/or data cables and/or any other services which may be on site where the services are to be provided;

- (d) access must be unhindered and uninterrupted once a date and time for the services to be provided has been agreed on (in writing or otherwise). If access is not granted on the date and time organised, a callout fee of \$148.50 may be charged in addition to any costs, losses or expenses incurred as a result of arranging a date and time for the services to be provided; and
- (e) you irrevocably grant us the right to enter the property where the services are provided, without notice, and without being in any way liable to you or to any third party, to retrieve or recover possession of the Equipment at any time.

3.6 **Duration of works.** During the provision of services by us under these terms, you will:

- (a) immediately notify us should any competent authority require the suspension or cessation of the services;
- (b) immediately notify us should you become aware of any fact, matter or thing that might reasonably endanger the performance of the services;
- (c) permit us (or any of our subcontractors) to store Equipment at the property where the services are provided (or a location approved by us);
- (d) take all reasonable precautions to keep all persons away from the Equipment while it is stored and at a safe distance from the Equipment while it is in operation;
- (e) take all reasonable precautions to comply with all statutory obligations and by-laws and regulations imposed by any public authority for the safety of persons and property in relation to the services;
- (f) comply with all safety directions provided by us or the operator and will not operate or attempt to operate the Equipment.

3.7 **Timing.** Whilst we endeavour to meet all reasonable deadlines time is not of the essence in any of our contracts. Any quote we provide for providing the services, is an estimate only. Delay in providing

services will not affect your obligation to accept or pay for the services.

3.8 **Title.** The Equipment is and will at all times remain our property and nothing in these terms will create any interest in the Equipment in your favour.

3.9 **Risk.** Unless we otherwise agree in writing, you bear the risk of:

- (a) any deterioration, loss or damage to your property at all times, including any period we use or are on your property for the provisions of services; and
- (b) the Equipment including the safekeeping of Equipment and you indemnify us for all loss, theft or damage to the Equipment however caused

and where the Equipment is lost, stolen, damaged or destroyed, you must make good that loss or damage.

3.10 **Insurance.** Unless we otherwise agree in writing, you are responsible for all insurance of the property from which the Equipment is located or the services are provided at all times.

4 **Warranty**

4.1 **Australian consumer law.** Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the services, you are entitled to cancel your contract with us and seek a refund for the unused portion, or to compensation for its reduced value. If a failure with our services does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time or cancel the contract for the services and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the services.

4.2 **Unauthorised provision of services.** Any person who provides the services without authorisation will void all warranties.

4.3 **Representations.** Comments made by any of our employees, contractors or representatives do not necessarily reflect the opinions or obligations of our managing staff and cannot be relied upon. Only written documentation signed by our director must be taken as authoritative. We do not provide any warranty in respect of the condition of any Equipment or its fitness for any particular purpose.

4.4 **Complaints and feedback.** All complaints and feedback must be made in writing addressed to the director within 5 days of the cause of the complaint or

feedback. Any dispute on an invoice must be made within 14 days from the date of the invoice.

- 4.5 **Workplace Health & Safety.** Although we are responsible for ensuring our services are provided safely and in compliance with all regulations, there are obligations on you including advising us in advance of any potential risks or safety concerns. Unless specified otherwise, all quotes exclude any additional costs of safety equipment including equipment for lifting, providing access, barricades, additional tradesmen or any other safety equipment or apparatus that may be required to ensure the services are provided safely and in compliance with workplace health and safety regulations (or similar).

5 Liability

- 5.1 **Exclusions and limitation of liability.** You expressly agree that:

- (a) the use of the Equipment and provision of the services is at the your risk and we give no guarantee, warranty, undertaking or representation in relation to services provided to you, their quality, fitness for any purpose, their compliance with any description or sample, or otherwise;
- (b) all information and specifications provided by us in relation to the Equipment and provision of the services are approximations only and subject to any guarantees under Australian Consumer Law. Small deviations or slight variations from them which do not substantially affect the provision of services will not entitle you to reject the services, or to make any claim in respect of them;
- (c) we do not provide any warranty in relation to the services provided or the suitability of the property to carry out of the services and are not liable or responsible in any way to you or any other person for any loss, damage, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect, of any defect, deficiency or discrepancy in the Equipment or services provided. This includes timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for any and in relation to any of the following:
 - (i) services provided to you;

- (ii) delay in the provision of the services; or
 - (iii) failure to provide the services.
- (d) any advice, recommendation, information, assistance, or service that we provide in relation to the services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given and is provided without any warranty of accuracy, appropriateness or reliability. We do not accept any liability or responsibility for any loss suffered as a result of your reliance on such advice, recommendation, information, assistance or service;
- (e) we take no responsibility for any services hit, damaged, exposed when performing the works or otherwise in accordance with these terms;
- (f) you indemnify us against the costs of any action in respect of recovery, including without costs expended in relation to any debt collection agency fees and solicitors' fees (on an own solicitor-client basis), and the balance of any amount owing to us;
- (g) where liability for breach of any guarantees under the Australian Consumer Law can be limited, our liability (if any) will be limited to the costs of re-providing the services; and
- (h) we, including our servants and agents, are indemnified by you in respect of any claim or demand made or action commenced by any person in connection with any loss arising from or incidental to the provision of services, any request for services or the subject matter of these terms.

- 5.2 **Force majeure.** If circumstances beyond our control prevent or hinder the provision of the services, we are free from any obligation to provide those services while those circumstances continue. We may elect to terminate the contract or keep it on foot until such circumstances have ceased. Circumstances beyond our control include, but are not limited to, unavailability of staff or Equipment, materials or components, strikes, lockouts, pandemic related lockdowns or restrictions on movement, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

6 Security Interest, Charge and Mortgage

6.1 **Charge.** As security for payment to us of all amounts payable by you and for your obligations and liabilities pursuant to these terms, you charge in favour of us for the due and punctual payment and performance of those obligations and liabilities, all of your legal and equitable interest of whatsoever nature held in any and all real property both present and future.

6.2 **Security.** On our request, and without limiting the general nature of the charge in this clause, you will execute any documents and do all things necessary as required by us to create and register a mortgage security or other instrument of security over any real property on terms satisfactory to us. Where you do not do so within a reasonable time of our request, you irrevocably appoint each officer or solicitor appointed by us to be your true and lawful attorney to execute and register those security instruments.

6.3 **Costs.** You indemnify us on an indemnity basis (which means you cover all costs that become payable by us) against all of our costs and expenses incurred in relation to the preparation and registration of any such charge and mortgage documents.

6.4 **Consent.** You acknowledge and agree to:

- (a) consent unconditionally to us lodging a caveat or caveats noting our interest in any of your real property;
- (b) sign any documents and provide all assistance and information required in order for us to attend to the registration and maintenance of any security interest;
- (c) ensure that our security position, rights and obligations, are not adversely affected by the PPSA; and
- (d) not register, or allow a third party to register, a Financing Change Statement in respect of a Security Interest relating to these Terms, unless otherwise consented to in writing.

6.5 **Instalments under PPSA.** For the purposes of the PPSA:

- (a) services provided by instalment made under these terms are not a separate security agreement but form part of these terms together with any credit application, guarantee or indemnity or other contractual documents;
- (b) an instalment contract is, and is deemed to be, a single security agreement for the purposes of the PPSA; and
- (c) these terms form a continuous security agreement with any prior terms and do not

constitute a separate security agreement. This applies regardless of any term to the contrary in these terms, any invoice or any other document.

6.6 **Change of details.** You acknowledge and agree that you will not change your name, ACN or ABN or other details required on the PPSR, without first notifying us in writing.

6.7 **Contracting out.** You acknowledge and agree to contract out of your rights to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in this section). To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 134(2), 135, 136, 137, 142 and 143.

6.8 **Waiver.** You waive your rights pursuant to section 157 of the PPSA to receive notice of verification statement.

6.9 **Non-disclosure.** The parties agree not to disclose information in connection with these terms (including the existence of any terms or the exercise of any rights under these terms) that is not publicly available except if the information is:

- (a) disclosed with the prior consent of the other party to these terms (which must not be unreasonably withheld);
- (b) disclosed to your or our officers, employees, auditors, legal or other advisers; or
- (c) is information which the disclosing party reasonably believes is required by any law or stock exchange to be disclosed (except that this clause does not permit us to disclose any information of the kind referred to in section 275(1) PPSA unless sections 275(7) PPSA applies).

7 Credit

7.1 **Terms of credit.** Any agreement by us to grant you credit upon these terms has been or will be made on the basis of a credit application and such other documents and information as may be required by us. Until we grant credit by notice in writing, or if having granted credit, we exercise our powers to withdraw, refuse or suspend credit under these terms, and we will only supply services to you on the basis of cash in advance. The granting of credit does not oblige us to extend any particular amount of credit to you and we may withdraw, refuse, suspend or limit credit to you at any time, in our absolute discretion, without notice or providing any reason. You must notify us in writing if there is any change in the shareholding or ownership of you (if you are entering into these terms as a

company) or any material change in your financial position.

8 Price

8.1 **Amount.** You will pay us according to the applicable prices at the date of provision of our service without deductions or setoff unless quoted by us or we otherwise advise.

8.2 **Payment.** Payment must be made upon demand on the issue of an invoice or for approved account customers, within the payment terms as issued on the invoice. A 30% deposit is required prior to the services being provided and progress payments may be required. Late payment of any monies owing under these terms will incur an interest charge of 15% per annum calculated on a daily basis from the invoice date plus all debt recovery costs including in house administration. Payment may not be withheld for any reason.

8.3 **Method.** We accept payment by cheque, cash, direct deposit, credit card (Mastercard/Visa/America Express) or similar method as agreed prior to works being undertaken. A 1.5% surcharge applies to Visa/Mastercard/BankCard and 2.0% surcharge applies to American Express.

8.4 **Statutory charges excluded.** All prices are exclusive of sales tax, goods and services tax and other statutory duties.

8.5 **Background Checks.** We reserve the right to obtain, and you consent to us obtaining, information on businesses prior to undertaking works through third-parties such as Creditor Watch. We also reserve the right to report a default on companies upon failure to pay outstanding invoices.

9 Default

9.1 **Defaulting party.** A default will occur where:

- (a) either party breaches a material term of these terms and such breach is not remedied within 14 days of receiving notice from the other party requiring it to do so;
- (b) in the case that you are a body corporate, it becomes an externally-administered body corporate or has an application for winding up filed against it;
- (c) in the case that you are an individual, you commit an act of bankruptcy or become insolvent under administration;
- (d) you fail to make payment to us by the due date for payment under the invoice and these terms;
- (e) you make any representation or warranty connection with a contract, or any information provided by you to us including where a credit application is incorrect,

misleading or deceptive (whether by omission or otherwise) in any material respect; or

(f) where we form the opinion, in our absolute discretion, that your creditworthiness or credit standing alters from that indicated in its credit application.

9.2 **Recourse for default.** If a party defaults, the other party may:

- (a) treat a quote or the whole of the contract as repudiated and sue for breach of contract; and/or
- (b) vary the terms of any credit application, quote or contract; and
- (c) where you are in default, we may:
 - (i) refuse to provide the services to you on credit or at all; and/or
 - (ii) exercise any right or remedy available under contract, the PPSA or any other applicable law, including to enforce the security interests created by the contract; and/or
 - (iii) by notice to you, declare all monies owing by you to us on any account immediately due and payable (including the amount payable).

9.3 **Further assurance.** You appoint us and each of our directors as your joint and several attorneys for the purpose of doing all acts, matters or things we think are necessary to give full effect to this clause.

10 Privacy

10.1 **Personal Information.** Where you provide us with personal information (as defined in the Privacy Act 1988) including about any individual, you must have that individuals' consent to provide that information to us having regard to and for the purposes set out in this clause and in our privacy policy (if any).

10.2 **Use of Information.** We may collect, use and disclose personal information for purposes of contracting with you under these terms. This includes assessing your application, monitoring the value of and enforcing the security interests created by a contract, reviewing credit arrangements on a periodic basis or in connection with changes (e.g. credit limit) as though assessing a new application, fulfilment and delivery of services, market research, planning, business development, debt collection and customer relationship management. We may also conduct lawful and relevant credit and reference checks (including consumer credit checks).

10.3 **Marketing.** We may provide marketing communications to you by email and other means on

- an ongoing basis, unless you opt out.
- 11 Guarantee**
- 11.1 **Guarantors.** In consideration of us providing the service to you at the request of the Guarantor specified in any credit application or any other agreement we nominate as a customer agreement, the Guarantor will hereby guarantee and indemnify us in respect of all monies which you owe us.
- 11.2 **Principal obligation.** The Guarantor guarantee is a principal obligation and a continuing guarantee and will not be affected by any act or omission by either of us and will be binding on the Guarantor despite any irregularity in this guarantee or its execution.
- 11.3 **Payment of monies.** The Guarantor will pay us on demand all monies which you owe to us.
- 11.4 **Security.** As a further security, you and the Guarantor hereby agrees to charge all present and future interest in any real or personal property which you or they may own for the payment of monies which you owe us. You and the Guarantor hereby appoints us as your joint and several attorneys to do anything necessary to give effect to this clause and acknowledge that we may sell the property charged on default under these terms.
- 12 Credit application details**
- 12.1 **True and correct.** You certify that all information provided to us in accordance with any credit application or to induce us to provide the services is true and correct. You warrant that (where applicable) none of your members and/or directors are undischarged bankrupts, have ever been bankrupt, convicted of any criminal offence or have any pending criminal offence court proceedings.
- 12.2 **Information and credit reports.** We may:
- (a) refuse your application for credit facilities;
 - (b) withdraw, vary or otherwise deal with credit facilities at our absolute discretion without prior notice;
 - (c) take any action irrespective of whether our services have been accepted or not if for any reason we determine in our absolute discretion that no further credit is to be extended to you.
- 13 General**
- 13.1 **Relevant law.** These terms will be construed in accordance with the laws of Queensland and the parties submit to the jurisdiction of the Queensland Courts.
- 13.2 **Waiver.** The failure of either of party to exercise any rights under these terms will not waive that right, nor will any practice developed between us waive or lessen our respective rights under these terms.
- 13.3 **Severance.** Any provision of these terms which is found by a Court of competent jurisdiction or any competent Government authority to be invalid, illegal or unenforceable, will be severed from these terms and will be deemed never to have been part of them.
- 13.4 **No restraint.** No provision expressed or implied in these terms restricts our right to sell the goods or provide services to third parties.
- 13.5 **Confidentiality.** You must treat all information which we give you as private and confidential, and must not disclose that information to any person nor use it in any way which may cause us injury or loss unless that information is public knowledge or was known by you before we gave it to you.
- 13.6 **Entire contract.** Unless agreed otherwise in writing these terms apply to all orders placed and accepted by us whether written or oral and no other terms, in part or whole, other than statute, form part of a contract with us. If a Court decides another term or set of terms apply we reserve the right to adjust our selling price in the contract to reflect any changed terms or conditions.
- 14 Definitions**
- 14.1 In these terms, unless the subject or context is inconsistent, each of the following expressions shall have the meaning as set out:
- (a) **Australian Consumer Law:** the Australian Consumer Law contained in schedule 2 of the Competition and Consumer Act 2010 (Cth).
 - (b) **Equipment:** any equipment, tools, materials or other similar items required to carry out the works under these Terms.
 - (c) **Guarantor:** each individual, or individuals, specified in any credit application.
 - (d) **PPSA:** Personal Property Securities Act 2009 (Cth).